
(2001) 09 PAT CK 0094

In the Patna High Court

Case No : Criminal Appeal No. 88 of 1995

Sona Chaudhary @ Sonwa Chaudhary

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 11-09-2001

Acts Referred:

Citation : (2001) 09 PAT CK 0094

Final Decision : Dismissed

Judgement

R.N. Prasad and B.N.P. Singh, JJ.—Both the appeals arise out of the judgment and order dated 12.4.1995 passed by District and Sessions Judge, Nalanda at Biharsharif in Sessions Trial No. 417 of 1993. They have been heard together and are being disposed of by this judgment.

2. The Appellants in both the appeals have been convicted for the offence u/s 302 of the Indian Penal Code and sentenced to undergo imprisonment for life. They have further been convicted for the offence u/s 27 of the Arms Act and sentenced to undergo rigorous imprisonment for seven years.

3. Bijendra Chaudhary, P.W. 8 is informant in this case. He went to the police station along with dead body of his brother. Rajendra Chaudhary. His fardbeyan was recorded on 11.10.1992 at 1 A.M. His fardbeyan was that there were a well and a cabin of one Shivnandan Mahto in Mokri Khanda. Pumping set was fitted in the well. There was a public tank near the well. He had grown Singhara crop in the tank. He was accumulating water in the tank from the pump set fitted in the well for about 4-5 days. Rajendra Chaudhary, Chamru Chaudhary, Baleshwar Chaudhary and Shivnandan Mahto were sleeping on the roof of the cabin. At about mid night five persons variously armed with fire arms out of whom he identified the Appellants and one Sarju Paswan in the moon at night, came on the roof of the cabin and threatened not to raise alarm. They fired causing injury to Rajendra Chaudhary, Shivnandan Mahto @ Shivji Mahto and Chamru Chaudhary out of whom Shivnandan Mahto and Chamru Chaudhary died on the spot but Rajendra Chaudhary was alive. After committing the murder the culprits

ran away. He and Baleshwar Chaudhary came down from the roof and went to the village and disclosed about the occurrence. Many people came there. Some one had gone to village Murgiyachak to inform about the occurrence. When they returned his brother Rajendra Chaudhary was alive. He with the help of villagers took him to the doctor, Birendra Babu, who declared him dead. Thereafter, he was taken to the police station where he gave fardbeyan. The tank was of the people of Murgiyachak. He used to take settlement of the tank due to which Appellant Sona Chaudhary was annoyed.

4. On the aforesaid fardbeyan first information report was drawn, investigation was taken up and on completion of the investigation charge sheet was submitted in the court. The court took cognizance and committed the case to the court of Sessions for trial. Sarjug Paswan was absconding and as such his trial was separated. The trial court convicted the Appellants as indicated above.

5. The defence of the Appellants was that they were innocent and had falsely been implicated in this case.

6. The prosecution in support of its case examined 14 witnesses out of whom P.W. 1 is witness to the inquest of Shivnandan Mahto and Chamru Chaudhary. P.W. 2 is witness to the inquest of Rajendra Chaudhary. P.W. 3 is a doctor, who held postmortem over the dead body, P.W. 8 is informant and is an eye witness to the occurrence. P.W. 9 and P.W. 12 are hearsay witnesses. P.W. 4, P.W. 5, P.W. 6, P.W. 7, P.W. 10 and P.W. 11 have been declared hostile. P.W. 13 is investigating officer. P.W. 14 produced material exhibit i.e. empty cartridges in the court.

7. Learned Counsel for the Appellants at the very outset pointed out that P.W. 8 is only eye witness in this case. In fact he was not an eye witness and as such on the evidence of sole eye witness the judgment and order of conviction is bad in law. It is well known law that for establishing the fact there is no need of number of witnesses. Section 134 of the Evidence Act is relevant for the purpose. It says that no particular number of witnesses shall in any case be required for the proof of any fact. The said aspect of the matter has been examined in the case of *Vadivelu Thevar Vs. The State of Madras*, In the said case the Apex Court has categorically held that a number of witnesses are not required to prove any fact. The court should not insist upon the number of witnesses rather it should consider the quality of evidence. While considering the aforesaid aspect of the matter the Apex Court has further held that generally oral testimony in this context may be classified into three categories, namely (1) wholly reliable (2) wholly unreliable and (3) Neither wholly reliable nor wholly unreliable. In the case of category first and second there is no difficulty in coming to a conclusion. If it is found that the evidence of the witness is wholly reliable, the conviction can be sustained but if it is found that evidence of the witness is wholly unreliable the case will fail and will end in acquittal. The difficulty would be in the case of third category i.e. neither wholly reliable nor wholly unreliable. In such type of case the court should look forward for corroboration and if such evidence is corroborated by other evidence, the court can come to a conclusion for passing

an order of conviction. Keeping in mind the well settled rule of law, as indicated above, now we shall proceed to examine the evidence of the witnesses.

8. The occurrence is alleged to have taken place on 10.10.1992 at mid night. The fardbeyan of the informant was recorded at the police station on 11.10.1992 at about 1 A.M. i.e. one hour of the occurrence. The incident took place in the night at about mid night. The Appellants were co-villagers of the informant. It was a moon lit night and in the incident three persons were killed. The deceased, the informant and one Baleshwar were sleeping on the roof of the cabin. The Appellants, one Sarju Paswan (absconder) and one unknown person came on the roof of the cabin and threatened not to raise alarm. They fired causing injury to three persons out of whom Shivnandan Mahto and Chamru Chaudhary died on the roof of the cabin and Rajendra Chaudhary was declared dead when he was taken to the doctor and thereafter the informant took him to the police station and gave his fardbeyan.

9. The informant, P.W. 8, is the only eye witness to the occurrence. His evidence is that in the night of the occurrence he, his brother Rajendra Chaudhary, Shivnandan Mahto, Chamru Chaudhary and Baleshwar Chaudhary were sleeping on the roof of the cabin. Five persons including the Appellants, one Sarju Paswan (absconder) and one unknown person came armed with fire arm. They fired causing injury to Rajendra Chaudhary, Shivnandan Mahto and Chamru Chaudhary. Shivnandan Mahto and Chamru Chaudhary died on the roof of the cabin and Rajendra Chaudhary died subsequently. His fardbeyan was re-corded at the police station after about one hour of the occurrence on the basis of which first information report was lodged. In cross examination the witness admitted that the deceased Rajendra Chaudhary was his brother, the deceased Chamru Chaudhary was his villager and in relation he was maternal brother. He has no concern with Shivnandan Mahto. He admitted that he had no land arpund the cabin. He had grown Singhara crop in the tank near the cabin. He was accumulating water for about four days in the tank, the tank was of the villagers. He had not taken permission from the Circle Officer. He used to take settlement from the cultivator and used to grow "Singhara" in the said tank. He had no knowledge that in whose name the tank was recorded in the records of right. He did not know the plot number on which the cabin and the well were situated. Burha Nagar is situated at a distance of 50 yards from-the cabin. Chamar Toli is in the north east of the cabin. There is a road north to the cabin. Chamar Toli is near the hospital. The house of Shivji is situated at a distance of 400 yards north. He and his brother were watching "Singhara" croa Other persons also used to come on the cabin. On the night of the occurrence Shivji Mahto reached on the cabin before him. Cabin is a small room. There was a stair in the cabin to go to the roof. There were only four steps in the stair. Where stair ends on the roof, the dimension of the roof is 3" x 1.50". He was sitting on the eastern side of the roof in the middle. The well was adjacent to the cabin. The pumping set was running at the relevant time. Water was falling on the eastern side. The culprits all on a sudden came on the roof of the cabin and threatened to kill if

alarm is raised. Shivji, Rajendra Chaudhary, Chamru Chaudhary and Baleshwar Chaudhary were sleeping on the roof. He awoke them. He had seen the firing by the culprits and injury on the person of the deceased. Blood had also fallen on the bed and clothes of the deceased persons. After the occurrence he had gone to the village raising alarm and thereafter he went to the police station along with his deceased brother, Rajendra Chaudhary. He had gone to the police station prior to reaching the police at the place of occurrence. After the occurrence he had gone to the village Murgichak raising alarm. Many people had assembled at the place of occurrence. People from Chamar Toli and Burha Nagar had also reached at the place of occurrence. Appellant Sona Chaudhary had enmity with Ramashish and Chamru. Appellant Padum Mali had also enmity with Ramashish. The pumping set was of one Bilash Yadav. The well was of Shivji Mahto, the deceased. No person of the family of Bilash Yadav was at the place of occurrence. He came down from the roof after the culprits ran away. The clinic of doctor Birendra Babu was in Islampur bazar near bus stand.

10. P.W. 9 is son of the deceased Shivnandan Mahto. He is not an eye witness. He is hearsay witness. His evidence is that Baleshwar Chaudhary had come and disclosed about the occurrence. The witness has categorically stated that he learnt from Baleshwar Chaudhary that the Appellants and one Sarju Paswan had committed the murder of his father and two Others. The witness has further stated that there was blood on the bed and the cloths. On the cabin there were 6-7 beds out of Which there was blood on two beds.

11. P.W. 12 is also hearsay witness. He is son of deceased, Rajendra Chaudhary. He learnt from Bijendra Chaudhary, P.W. 8, soon after the occurrence that the Appellants and one Sarju Paswan had committed the murder.

12. Learned Counsel for the Appellants, however, at this juncture pointed out that dimension of the roof was 3" x 1.50" and in such a situation it is not possible that five persons will sleep on the roof of the cabin. According to him entire evidence is improbable. The submission, in our view, has no substance at all. P.W. 8 no doubt has stated that where stair ends on the roof of the cabin, the dimension of the roof is 3" x 1.50". The said dimension is not the dimension of the roof of the cabin. The witness has, however, stated in his evidence that cabin is a small room and on the roof of the cabin the deceased and one Baleshwar were sleeping and he was sitting on eastern side of the roof. P.W. 9 has also made it clear that on the roof of the cabin there were 6-7 beds out of which there was blood on two beds. The said fact has also been corroborated by the investigating officer, P.W. 13, who stated in his evidence that he did not record the dimension of the roof of the cabin but he found five beds on the roof of the cabin. He also found blood on the beds out of which he seized one bed. Therefore, it is evident that even though the dimension of the roof was not taken by the investigating officer yet evidence is available on the record of the case that five beds were found on the roof of the cabin.

13. Learned Counsel for the Appellants, however, pointed out that P.W. 8 is not

an eye witness to the occurrence but he could not be able to point out as to how the witness is not an eye witness. It further appears that the evidence of P.W. 8 is consistent with initial statement i.e. fardbeyan Ext. 3. No omission/contradiction has been pointed out by the learned Counsel for the Appellants. Furthermore, there is nothing in the evidence to show that attention of the witness was drawn with respect to previous statement made before the police. Therefore, on consideration we find that the evidence of sole eye witness appears to be wholly trustworthy.

14. Moreover, the evidence of the sole eye witness is corroborated by the evidence of hearsay witness i.e. P.W. 9 and 12. The oral evidence of sole eye witness is also corroborated by the evidence of the doctor, who held postmortem over the dead body. The doctor, P.W. 3, has categorically stated in his evidence that the injuries caused on the person of the deceased were caused by fire arm. He opined that the death occurred due to shock and hemorrhage as a result of the injuries caused by firearm. Time elapsed since death was 24 hours which fits in the time of occurrence. The objective findings of the investigating officer also corroborated the prosecution case i.e. evidence of P.W. 8. Investigating Officer has categorically stated that he found blood on the roof of the cabin. He seized blood and empty cartridges in presence of the witnesses. He prepared inquest report of the deceased in presence of the witnesses.

15. Thus, on consideration as discussed above, we are of the view that the evidence of sole eye witness is wholly trustworthy and conviction can be sustained on the evidence of the sole eye witness. Moreover, his evidence is also corroborated by the evidence of hearsay witnesses, P.W. 9 and 12 and the evidence of the doctor, P.W. 3, and also the objective findings of the Investigating Officer at the place of occurrence.

16. Thus, we find no merit in these appeals. Accordingly, both the appeals are dismissed. Appellants Sona Chaudhary @ Sonwa Chaudhary and Suresh Chaudhary are on bail. Their bail bonds are cancelled. They are directed to surrender before the trial court to serve out the remaining period of sentence.